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LAU BAK SIANG & ORS

v.

PENTADBIR TANAH NEGERI PERLIS

B

HIGH COURT MALAYA, KANGAR
MOHD ZAKI WAHAB JC
[LAND REFERENCE NO: 15NCVC-08, 14 & 48-05-2013]
16 FEBRUARY 2014

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LAND LAW: *Acquisition of land - Acquisition for public purpose - Compensation - Objection against amount awarded - Valuer's report - Whether valuer visited land personally - Whether report based on third party's evidence or opinion - Whether valuation report must include third party's evidence or opinion in writing - Whether valuer could rely on*

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verbal information - Whether valuation report contained hearsay evidence - Whether valuation report raised prima facie evidence that amount of compensation insufficient - Land Acquisition Act 1960, ss. 12, 37, 38 & 45

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The State Government of Perlis had acquired padi land belonging to the three applicants for the purpose of a flood mitigation project. The land was duly acquired under the Land Acquisition Act 1960 ('the Act'). Pursuant to the acquisition, the respondent had, as required by s. 12 of the Act, conducted an inquiry to

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determine the value of the land and the appropriate compensation to be paid to the applicants. Subsequent to the enquiry, the respondent awarded certain amounts of money as compensation to the applicants. The applicants, being dissatisfied with the amount of compensation awarded, lodged an objection to the

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respondent. The applicants filed valuation reports of the land supposedly prepared and signed by a valuer by the name of Sr Sultan Mydin Ibrahim ('the valuer'). The purpose of the report was to prove that the amounts awarded by the respondent was insufficient and inappropriate. The respondent filed preliminary

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objections against the use of the applicants' valuation reports, alleging that the valuer did not visit the scheduled land personally, thus he did not have for himself the evidence as to the locations and conditions of the lands and consequently, the valuer would not be able to appropriately assess the reasonable value of the land.

I

Held (dismissing application):

(1) For a valuer to be able to give an appropriate value of the scheduled land, he would need evidence to form his opinion. This evidence could be based on his personal visit to the land or he may also depend on a report by a third party. In any case, this evidence must be shown clearly in the eventual valuation report. Herein, the valuer had never visited the scheduled land to have his first sight of the land. It followed that he must have depended on the report prepared by third parties who had visited the scheduled land, either by his officers or personnel, to enable him to assess the appropriate value of the scheduled land. (paras 21 & 23)

(2) The applicants' valuer's report formed a crucial and material evidence to prove the applicants' case. Under the circumstances, such a report must be subject to the evidential rule especially on admissibility. For that reason, the report must contain admissible evidence only. Therefore, where the valuer relied on third party's observation on the condition of the land, either oral or a written report, the valuer must include the third party's evidence or opinion in his report. This could be done by producing the third party's statement in writing and attaching the same to the valuation report. (para 28)

(3) Clearly, the valuer had relied on third parties' evidence that had visited the land to form his opinion as regard to the appropriate value of the land. Suffice to say that he would not be able to assess the appropriate value of the scheduled land without relying on the third party evidence. It could not be ascertained that any one or more of the persons who visited the land had prepared any report on the location and condition of the land, which was later relied on by the valuer in preparing his report. If there was no written report prepared by any one of them, the valuer must have relied on their verbal information. His valuation report thus contained hearsay evidence as the third parties, report or evidence had not become part of the valuation report. Therefore, his report was inadmissible in the reference proceeding herein. (paras 30 & 31)

(4) Without the valuation report to raise a *prima facie* evidence to prove that the amount of compensation decided by the land administrator was not sufficient, there was effectively nothing before the court to deal with the application. (para 32)

Case(s) referred to:
Allied Bank (Malaysia) Bhd v. Yau Jiok Hua [1998] 2 CLJ 33 HC ***(refd)***
Kerajaan Malaysia v. Central Strata Sdn Bhd [2013] 8 CLJ 632 HC ***(refd)***
Perusahaan Sinar Jaya Sdn Bhd v. Etiqa Insurance Bhd [2013] 8 MLJ 317 ***(refd)***
Sagau Batu Bala v. Zaharah Mustafa Raja Sewa & Anor And Another Case [2013] 1 LNS 720 HC ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, ss. 12, 37(1), 38(1), (5), 45

For the applicants - Chua Peng San; M/s Chuah Halim & Co
For the respondent - Aliza Jamaludin; SFC

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Zaki Wahab JC:

Introduction

[1] For the purpose of a flood mitigation project, padi land belonging to the three applicants were acquired by the State Government of Perlis. The land was duly acquired under the Land Acquisition Act 1960 (Revised 1992) (the Act). Pursuant to the acquisition, the respondent as required by s. 12 of the Act conducted an inquiry to determine the value of the land and the appropriate compensation to be paid to the applicant. This is in line with s. 12 of the Act which provides:

Section 12. Enquiry by the Land Administrator

(1) On the date appointed under of subsection 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule:

Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.

(2) The Land Administrator shall also enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land, and into the objections, if any, made by any interested person to the area of any scheduled land.

(3) The Land Administrator may for a sufficient cause to be recorded by him in writing postpone any enquiry or adjourn any hearing of an enquiry from time to time.

[2] Subsequent to the enquiry, on 31 December 2012 the respondent awarded certain amounts of money as compensations to the three applicants. The applicants being dissatisfied with the amount of compensation awarded acting pursuant to s. 37 of the Act lodged an objections to the respondent.

[3] Section 37 of the Act provides as follows:

Section 37. Application to Court

(1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

[4] Section 38 of the Act provides for the manner by which an objection under s. 37(1) is to be lodged. Sub-section 38(1) states that the objection shall be made by way of written application in Form N, requiring the respondent to refer the application to a High Court. Under sub-s. 38(5), the respondent is required to refer the application to the High Court within the period(s) stipulated therein.

[5] In the present case on 13 May 2013, the respondent referred the applications to the Kangar High Court.

The Reference

[6] Section 45 of the Act provides for the manner in which the reference proceeding is to be conducted. It provides, *inter alia*, that the proceeding must be conducted in an open court, by a High Court Judge assisted by two assessors. Detailed procedures are provided under the Third Schedule of the Act (the Schedule).

[7] It is pertinent to note that the Schedule itself was enacted under s. 45 of the Act, with the intent to further facilitate the proceedings. Two things are apparent: first, the Schedule provides a specific procedure and secondly, it stipulates the rules of evidence in dealing with the hearing of the proceeding. Paragraph 2 of the schedule provides that the applicant must file a valuation report to support his application. The report must show a *prima facie* evidence that support the application. It is important to observe that due to the express provisions in the Schedule, the valuation report is of utmost importance and plays a crucial role in the reference proceeding.

[8] The applicants in these cases, purporting to comply with the Schedule, filed valuation report of the land supposedly prepared and signed by a valuer by the name of Sr. Sultan Mydin Ibrahim (the valuer). Certainly the purpose of the report is to prove that the amounts awarded by the respondent is insufficient and inappropriate. These reports became subject matters of objections by the respondent.

Hearing and Preliminary Objection

[9] These applications were fixed for hearing before me on 18 December 2013. Prior to the hearing, the respondent filed written preliminary objections against the use of the applicants' valuation reports. It is contended by the respondent that the objections raise a point of law.

[10] In the written objections, the respondent alleged that the valuer did not visit the scheduled land personally. Thus he did not have the opportunity to personally assess the value of the land. It is further contended that since the valuer had not personally visited the scheduled land, therefore he did not have for himself

the evidence as to the locations and conditions of the lands and consequently the valuer will not be able to assess the reasonable value of the land.

[11] There is no doubt that when the valuer renders an opinion on the appropriate value of the lands it must be based, *inter alia*, on the locations and conditions of the land. To be able to come out with that opinion the valuer must personally know the scheduled lands, especially the locations and conditions of the scheduled lands. In the valuer's reports it was expressly admitted some people had visited the land. The valuer's report too had made observation that the schedule lands located as second layer land from a road. Since the valuer personally did not visit the scheduled land, it was alleged that the valuer's opinions were clearly depended upon opinion and observation of a third party, presumably from the report of person(s) who visited the scheduled land.

[12] It is important to note however that the applicant's valuation report had never attempted to hide the fact that Sultan Mydin Ibrahim had not visited the scheduled land. The visit to the scheduled lands were made by four people namely Encik Abdul Ghani bin Khamis, Encik Mohd Rizal bin Mohd Ali, Encik Zhuhaimi bin Mammo and Encik Shahrizal bin Rahpal on 16 December 2012. This confirmed that the valuer Sr Sultan Mydin Ibrahim had never visited the scheduled lands although he later prepared and signed valuation reports. His reports however had not made any reference to the report by these people, who had visited the scheduled land. Their report too had not been appended to the valuer's report.

[13] When the valuer relied on a third party's evidence and that third party evidence had not been produced together with the report, the third party evidence become a hearsay evidence and the valuation reports should not be admitted as evidence for the reasons of hearsay. In any proceeding of this kind the applicant could not rely upon the report to prove inadequacy of the amount awarded by the Land Administrator. Under the circumstances it was submitted that the valuer's reports, which contained hearsay evidence (as report/s prepared by the persons who visited the land which was relied upon by the valuer was not produced) inadmissible and cannot be relied upon by this court.

[14] As earlier stated, as provided in the Third Schedule, in land reference proceeding of this nature, the applicant's valuation report will become a *prima facie* evidence in the application contesting the amount of compensation awarded by the respondent. Paragraphs 1 and 2 of the Third Schedule provide as follows:

> LAND ACQUISITION ACT 1960 (REVISED-1992)
>
> THIRD SCHEDULE [Section 45]
>
> EVIDENCE AND PROCEDURE IN LAND REFERENCE CASES
>
> Interpretation
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> 1. In this Schedule, unless the context otherwise requires-
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> "applicant" means the person upon whose application in accordance with section 38 reference to the Court is made in respect of an objection under section 37;
>
> "proceeding" means a proceeding in respect of an objection under section 37;
>
> "valuer's report", in relation to the report by the valuer of one party to the proceeding, includes his reply to the report of the valuer of the other party to the proceeding.
>
> Valuer's report and oral evidence
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> 2. (1) The applicant's valuer's report alone must establish a *prima facie* case for the applicant.
>
> (2) Oral evidence by the applicant's valuer shall only be adduced during cross-examination and re-examination, if any.
>
> (3) The respondent's valuer's report must be sufficient to rebut the applicant's valuer's report.
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> (4) Subparagraph (2) shall apply to the respondent's valuer as it applies to the applicant's valuer.

[15] In his valuation reports, Sr Sultan Mydin Ibrahim, as regards to the location of the land, gave the following description:

> 8. Lokasi
>
> Hartanah terlibat terletak di Kampong Wai, Kuala Perlis
>
> Hartanah terlibat boleh dihubungi dari Pekan Kuala Perlis melalui Jalan Kampong Wai sejauh 3.0 kilometer dan belok ke kiri melalui jalan tanah merah kira-kira sejauh kira-kira 0.7 kilometer

Hartanah terletak di lapis kedua dari Jalan Kampung Bukit Puteh dan lapisan pertama jalan tanah merah.

Hartanah terlibat terletak kira-kira 3.7 kilometer dari pekan Kuala Perlis. Bandar Kangar merupakan pusat pentadbiran dan perdagangan utama bagi Negeri Perlis.

[16] There is no doubt that he took into account the location and condition of the scheduled land in giving his opinion on the appropriate value of the scheduled land.

[17] The respondent filed a report to rebut the applicant's valuation report. The report was prepared by an evaluation officer from the valuation and property services department. As regards to the location of the scheduled land the respondent's valuation report stated as follows:

5.0 Lot terlibat terletak di Kampong Bendang Cina, Mukim Kuala Perlis, Negeri Perlis.

Lot terlibat boleh dihubungi dari Pekan Kuala Perlis melalui Jalan Bukit Kubu dan seterusnya melalui Jalan Kampong Wai sejauh kira-kira 4.0 kilometer dari arah utara. Lot terlibat terletak di lapisan kedua di sebelah kanan dari jalan raya (Jalan Kampung Bukit Puteh).

[18] In the respondent's valuation report it was never stated about "jalan tanah merah" and the scheduled land was located at the first layer counted from the "jalan tanah merah". For that reason the respondent contended that Sr Sultan Mydin's description on the location of the scheduled land was clearly wrong as it stands in complete opposite to the description of the land in the respondent's valuation report.

[19] On 18 December 2013, I proceeded to hear the objection. The Assistant State Legal Adviser of Perlis, Senior Federal Counsel Puan Aliza Jamaluddin, who represented the respondent reiterated the above stated objection that the applicant's valuation report should be rejected on the ground it contained hearsay statement. In reply the counsel for applicants said that what was stated by the applicant's valuer is not hearsay. If they have any doubt about the valuer's report the respondent had the right to call the valuer for cross-examination under sub-para. 2(2) of the Third Schedule.

A **Decision of the Court**

[20] In considering the objection, I have scrutinized the applicant's valuation report prepared by Sr Sultan Mydin Ibrahim and the respondent's valuation report. Having given objection
B serious consideration it is my considered view that the objection is well taken and accordingly I upheld the objection.

[21] In my view in order for any valuer to be able to give an appropriate value of the scheduled land, he needed evidence to form his opinion. This evidence could be based on his personal
C visit to the land or he may also depend on a report by a third party. In any case this evidence must be shown clearly in the eventual valuation report.

[22] As can be seen clearly in this cases, the valuer had never
D visited the scheduled land to have his first sight of the land. It follows that he must have depended on the report prepared by third parties who had visited the scheduled land, either by his officers or personnels, to enable him to assess the appropriate value of the scheduled land.

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[23] In an ordinary trial or proceeding, where a valuation report is prepared, the valuer who prepared the report will be called to give evidence (unless the report is admitted by the parties or deemed admitted). In that situation he had to produce evidence
F in which he had relied upon to come to his conclusion on the appropriate value of the scheduled land. If he had visited the land personally he would had full knowledge of the land and able to testify. However, if he had relied on a report by any third party, the report must be produced to verify his testimony. If the report
G had not been produced it could not be ascertained as to the existence, correctness and reliability of the report that he had relied upon. A failure to produce the report or any testimony by the person who prepared the report will put the valuer in a position of giving testimony on hearsay evidence.

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[24] In *Sagau Batu Bala v. Zaharah Mustafa Raja Sewa & Anor And Another Case* [2013] 1 LNS 720; [2013] 10 MLJ 843, a document contained confirmation of land ownership, which called pengesahan tanah temuda asal mendiang penghulu Lawai Besara
I produced and relied by a claimant in an arbitration in customary land dispute was held to be hearsay evidence on the account of

failure to call the person who had signed the document. In *Perusahaan Sinar Jaya Sdn Bhd v. Etiqa Insurance Bhd* [2013] 8 MLJ 317 the Court observed:

> [55] In the course of his evidence-in-chief which was furnished by way of a witness statement, it was apparent that Captain Khoo relied almost entirely, as he had to, on what was allegedly made known to him by the master. As such a considerable amount of his evidence was hearsay.

[25] It was further held by the learned judge:

> [60] He further conceded that he did not take a statement from Mr Aziz the quarry manager and failed to procure any documentation to bear out Mr Aziz's statement that the quantity of cargo was 5,400 metric tons. In short it would appear that the entirety of Captain Khoo's report was premised on oral hearsay without the benefit of recorded written statements from the direct participants, but rather reflected Captain Khoo's recollection of what he had been told orally during the visit on 21 December 2011. As this evidence is largely hearsay and was not substantiated in any way by written recorded statements, the admissibility and veracity of the same are in issue. Captain Khoo's evidence, as hearsay, cannot amount to a verification of the quantity of cargo loaded on the vessel at the material time. It can, at best, only show or prove that this is what he was told. As such it is of no probative value for purposes of ascertaining whether the vessel was, as a matter of fact, over loaded or not.

[26] In *Kerajaan Malaysia v. Central Strata Sdn Bhd* [2013] 8 CLJ 632; [2013] 5 MLJ 728, the question arose whether deposition of certain fact without revealing the source of information as contained in an affidavit to contest an application for summary judgment is hearsay and rendered the affidavit inadmissible. It was held by Lee Swee Seng JC:

> [31] Messrs Albert Khoo & Co would be the best person to say if they have received the said notices of assessment. They would have personal knowledge as to whether the notices of assessment had been received or not and not the defendant or its director Mr Lim Chin Khai who had affirmed an affidavit (encl. 12 para. 6) to say that the defendant had not received the notices of assessment. For such a crucial fact, such an averment by Mr Lim Chin Khai is hearsay and ought to be rejected.

[27] The above situation are cases where oral was given. Here, the proceeding is governed by the Third Schedule of the Act. As provided by para. 2 of the Third Schedule, oral testimony of the valuer is not required although the valuer could be called for cross-examination by opposing party. As I had earlier stated the valuation report is of importance and if I could put it in another way, it is the backbone of the applicant case. His valuation report could be the only evidence to challenge the award by the respondent.

[28] That being the case, the applicant valuer's report forms a crucial and material evidence to prove the applicant's case. Under the circumstances, such a report must be subject to the evidential rule especially on admissibility. For that reason the report must contain admissible evidence only. Therefore, as in the present cases, where the valuer relied on third party's observation on the condition of the land, either oral or a written report, the valuer must include the third party's evidence or opinion in his report. This could be done by producing the third party's statement in writing and attaching the same to the valuation report.

[29] As regards to the inadmissibility of hearsay evidence reference may be made to the case of *Allied Bank (Malaysia) Bhd v. Yau Jiok Hua* [1998] 2 CLJ 33; [1998] 6 MLJ 1 where Augustine Paul JC (as he then was) had this to say:

> It is trite law that a statement which is not based on personal knowledge would amount to hearsay and be inadmissible. Hearsay becomes admissible only when specific provision has been made for its admissibility.

[30] In this case clearly the valuer Sr Sultan Mydin Ibrahim had relied on third parties' evidence that had visited the land to form his opinion as regard to the appropriate value of the land. Suffice to say that he would not be able to assess appropriate value of the scheduled land without relying on the third party evidence. It could not be ascertained also that any one or more of the persons who visited the land had prepared any report on the location and condition of the land, which was later relied on by the valuer in preparing his report. If there was no written report prepared by any one of them, the valuer must have relied on their verbal information. His valuation report thus contains hearsay evidence as the third parties report or evidence had not become part of the valuation report.

[31] On my perusal of the applicant's valuation report, I found no such report or evidence by the third party was included in the valuation report. For the reasons discussed above, I found that the applicant's valuation report prepared by the valuer Sultan Mydin Ibrahim does contain hearsay evidence. I therefore rule that his report is not admissible in the reference proceeding herein.

[32] As I have earlier stated, without the valuation report to raise a *prima facie* evidence to prove the amount of compensation decided by Land Administrator is not sufficient, there is effectively nothing before the court for this court to deal with the application. That being the case the application herein is dismissed with no order as to costs.